

Workers Compensation by the claimant on January 23, 1997. Attached to the application was a notice of intent letter from claimant's attorney to respondent's attorney dated November 26, 1996, requesting payment of a medical bill in the amount of \$305 as unauthorized medical; an affidavit from claimant's attorney certifying that the notice of intent letter was sent to the respondent; the specific medical bill and medical records showing the care and treatment claimant received for her injuries. The claimant also offered at the preliminary hearing a copy of another letter he had sent to the attorney for the respondent dated January 20, 1997, again demanding that the \$305 medical bill be paid by respondent pursuant to the unauthorized medical statute found at K.S.A. 44-510(c)(2). Thereafter, claimant's attorney also admitted at the preliminary hearing another notice of intent letter, this one dated January 22, 1997, addressed to respondent's counsel which attached a medical report from claimant's treating physician, William O. Hopkins, M.D., recommending that claimant undergo an MRI scan. In that letter, claimant's attorney stated, "I will assume that this issue should also be addressed at the upcoming preliminary hearing."

The preliminary hearing was held in this matter on March 10, 1997, before Assistant Director Brad E. Avery. The claimant at the preliminary hearing requested the Assistant Director to authorize William O. Hopkins, M.D., as claimant's treating physician and to authorize claimant to undergo the MRI scan recommended by Dr. Hopkins. After hearing the evidence, the Assistant Director entered the preliminary hearing Order dated March 10, 1997, that is the subject of this appeal which authorized William O. Hopkins, M.D., as claimant's treating physician. The respondent argues the Assistant Director exceeded his authority when he authorized Dr. Hopkins as claimant's treating physician because that specific request was not raised by the claimant when she filed her application for preliminary hearing. As previously noted, the notice of intent letter sent by the claimant and attached to claimant's request for preliminary hearing, only requested payment of a medical bill pursuant to the unauthorized medical statute. There was no request by the claimant until the preliminary hearing to specifically appoint Dr. Hopkins as claimant's authorized treating physician.

The Appeals Board will first address the issue of whether it has jurisdiction to review this preliminary hearing Order. First, the Appeals Board finds the issue raised by the respondent is not one of the five issues listed in K.S.A. 1996 Supp. 44-534a that grant the Appeals Board jurisdiction to review a preliminary hearing order. However, respondent does allege that the Assistant Director exceeded his authority when he appointed claimant an authorized treating physician when such request was not specifically contained in the notice of intent letter sent to the respondent. See K.S.A. 1996 Supp. 44-551. Therefore, the Appeals Board has jurisdiction to review the narrow issue of whether, in its judgment, the Assistant Director exceeded his authority under these circumstances when he appointed claimant an authorized treating physician.

K.S.A. 1996 Supp. 44-534a authorizes an application for preliminary hearing to be filed on only the issues of furnishing medical treatment and payment of temporary total

disability compensation. A prerequisite of filing an application for preliminary hearing is the applicant shall give written notice to the adverse party of the intent to file such an application. The notice of intent shall contain a specific statement of the benefit change being sought. Respondent argues the notice of intent received by the respondent in this case did not contain the request for Dr. Hopkins to be authorized as claimant's treating physician. Such notice only requested that a medical bill from Dr. Hopkins in the amount of \$305 be paid as an unauthorized medical expense. Accordingly, the respondent concludes the Assistant Director did not have the authority to hear and decide any issue other than the one that was specifically contained in the notice of intent letter served on the respondent.

The Appeals Board has examined the preliminary hearing statute and agrees with the argument of the respondent. The language contained in K.S.A. 1996 Supp. 44-534a is specific and unambiguous. The Appeals Board finds the notice of intent letter served on the adverse party requesting medical compensation or temporary total disability benefits shall contain a specific statement of the benefit change sought. Therefore, the Appeals Board concludes the administrative law judge's jurisdiction at a preliminary hearing is limited to deciding the question specified as a benefit change in the notice of intent letter. The Appeals Board finds the Assistant Director did not have the authority to appoint Dr. Hopkins as claimant's authorized treating physician because such request was not specifically contained in claimant's notice of intent letter served upon the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Assistant Director Brad E. Avery dated March 10, 1997, should be, and is hereby, reversed and remanded to the Assistant Director to decide the single issue of whether the medical bill of \$305 should be ordered paid by the respondent as an unauthorized medical expense.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Donald T. Taylor, Kansas City, KS
Kip A. Kubin, Overland Park, KS
Office of Administrative Law Judge, Overland Park, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director